

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT DONTRALL SHARP,

Movant,

File No. 1:04-CV-433

v.

HON. ROBERT HOLMES BELL

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM OPINION AND ORDER

This matter is before the Court on Movant Robert Dontrall Sharp's application for a certificate of appealability.¹ In an opinion dated February 18, 2005, the Court denied Movant's § 2255 motion. The Court held that Movant had procedurally defaulted his claim based upon *Apprendi v. New Jersey*, 530 U.S. 466 (2000), by failing to file an appeal of his criminal conviction and sentence. The Court also held that Movant's *Apprendi* claim was meritless. In addition, the Court determined that Movant's claim of ineffective assistance of counsel was similarly meritless. Accordingly, the Court denied Movant's request for relief under § 2255. Movant now requests a certificate of appealability of the issues raised in his § 2255 motion.

¹Movant's application was filed under case file no. 1:02-CR-291, Movant's criminal case file. His application, however, relates to issues raised in his motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 which has been assigned file no. 1:04-CV-433.

Under 28 U.S.C. § 2253(c)(2), the Court must determine whether a certificate of appealability should be granted. A certificate should issue if Movant has demonstrated a "substantial showing of a denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The Court must "engage in a reasoned assessment of each claim" to determine whether a certificate is warranted. *Murphy v. Ohio*, 263 F.3d 466, 467 (6th Cir. 2001). Each issue must be considered under the standards set forth by the Supreme Court in *Slack v. McDaniel*, 529 U.S. 473 (2000). *Id.* at 467. Consequently, this Court has examined each of Movant's claims under the *Slack* standard.

Under *Slack*, to warrant a grant of a certificate, "[t]he petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." The Court finds that reasonable jurists could not find that the Court's denial of each of Movant's claims was debatable or wrong. Thus, Movant has not made a "substantial showing of a denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Therefore, the Court will deny Movant a certificate of appealability. Accordingly,

IT IS HEREBY ORDERED that Movant's application for a certificate of appealability (Docket #90, Case No. 1:02-CR-291) is **DENIED**.

Date: August 19, 2005

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
CHIEF UNITED STATES DISTRICT JUDGE